IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 92 OF 2005.

1. Mr. Miguel Caetano Francisco Afonso alias Miguel Afonso, aged 68 years, retired and his wife,

2. Mrs. Maria Pia Isabel Perpetua D'Silva Afonso, housewife,

Residents of House No. 236, A.C. Pacheco Road, Borda, Margao – Goa. ..... Petitioners

V/S

1. Mrs. Ana Anunciacao Fernandes alias Annie Coelho, widow of Teodosio Manuel de Natividade Coelho and her children

2. Mrs. Colleen Crasto, daughter of said Teodosio Coelho and her husband

3. Mr. Romano Crasto

4. Mrs. Wendy Vaz, daughter of said Teodosio Coelho and her husband

5. Mr. Mario Vaz

6. Mr. Ashok Rajadhyaksha, businessman and his children

7. Miss Amber Rajadhyaksha,

student, aged 15

8. Miss Kharishma Rajadhyaksha,
   student, aged 14

9. Mrs. Cynthia Coelho,
   daughter of late Teodosio
   Coelho and her husband

10. Mr. Harold Coelho

11. Miss Doris Coelho,
    daughter of said Teodosio Coelho

12. Miss Maria Coelho,
    daughter of said Teodosio Coelho

13. Mr. Joseph Coelho,
    son of said late Teodosio Coelho

All landlords and are residents as follows :

The defendants no.1, 9-10, 11, 12 and 13 :
B/204, Second Floor, Damodar Chambers, Isidorio Baptista Road, Margao, Goa.

The defendants at nos. 2 and 3 :
Romano Villa, Old Housing Board, Gogol, Margao, Goa.

The defendants at nos. 4 and 5 :
Opp. Mrs. Maggi Henriques, Notary and Advocate, Mangor Hill, Vasco-da-Gama.

The defendants at nos. 6, 7 and 8 :
1st Floor, Midland Apartments,
Near Fatima Convent, Margao, Goa. ..... Respondents

Mr. J. E. Coelho Periera, Senior Advocate with Mr. S. Karpe, Advocate for the petitioners.

Mr. C. A. Fereira and Mr. C. Fernandes, Advocates for the respondents No.1 to 13.

CORAM : R.M. LODHA, J.

DATE : 1ST SEPTEMBER, 2005.

ORAL JUDGMENT :

Heard. Rule, returnable forthwith.

2. Shri C. A. Fereira waives service for the respondents No.1 to 13. Rule is heard finally at this stage by consent of the leaned Senior Counsel and the Counsel for the parties

3. The trial Court has dismissed the petitioners' application under Order VII, Rule 14 (3) of the Code of Civil Procedure for production of the documents referred therein vide order dated 25.1.2005. Aggrieved thereby, the present writ petition has been filed.

4. In the application made by the present petitioners who are the plaintiffs in Regular Civil Suit No.237/2001, the

plaintiffs sought leave of the Court for production of the following documents :

a) Sale deed dated 29.11.1960, of one upon fourth (1/4th) of the property `Cabeceira de Calcondem', different from the one described under no. 40,001, in favour of Maria Engracia Goveia, before the Notary at Quepem.

b) Sale deed dated 24.2.1961 of 1/4th of the property 'Cabeceira de Colcondem' bearing no. 40,001, in favour of Maria Engracia Goveia and her husband Bento Coelho, alongwith ¼ of the house, under matriz no.452 and 453 respectively.

c) Deed of Rectification dated 8.12.1960, of sale deed dated 29.11.1960, to the effect that the property which is subject matter of sale deed dated 29.11.1960 is registered in the Land Registration Office under no. 40,001.

d) Attested copy of the application dated 15.5.1946 of Teodozio Manuel Natividade Coelho, duly attested by the Notary Furtado, presented before the Land Registrar for making endorsement in the mortgage deed dated 15.4.1946, 7.10.1945, 2.3.1945, 14.2.1944 and 11.7.1941, alongwith certificate of Regedor

dated 20.6.1946 duly attested by the Taluka Administrator to the effect that Salvador Fernandes is also known as Salu Fernandes, issued by the Sub-Registrar on 21.8.03.

e) Electoral Roll of Assembly Constituency of Curtorim showing the residence of interested party Miss Leopoldina Fernandes, and members of her family to prove the link between the original owners of the suit property and her and also to support the Photo Identity Card, as also the Ration Card.

2. While refusing to grant leave, the trial Court relied upon its earlier order dated 17.8.2004 and held that the present application was barred by res judicata.

3. On perusal of the Order dated 17.8.2004, I find that the earlier application came to be rejected as it was found vague and casual. The order dated 17.8.2004, therefore, cannot operate as res judicata in making a fresh application. As a matter of fact, the learned Counsel for the respondents did not dispute this position. He, however, submitted that in so far as the documents listed at items No.(a), (b) and (c) of the application were concerned, these documents have already

been declared void by the competent Court and, therefore, these documents cannot be relied upon by the plaintiffs.

5. The learned Senior Counsel for the petitioners-plaintiffs does not dispute that the sale deed dated 29.11.1960, the sale deed dated 24.2.1961 and the Deed of Rectification dated 8.12.1960 of sale deed dated 29.11.1960 have been declared void. Obviously, these three documents cannot be permitted to be produced in this fact situation.

6. As regards the documents listed at items No. (d) and (e), I am satisfied that the plaintiffs could be permitted to produce these two documents and the trial Court committed illegality and material irregularity in refusing to grant leave for production of these two documents. The inconvenience caused to the defendants can be compensated by award of reasonable costs.

7. I, therefore, dispose of this writ petition by following order :

The impugned order dated 25.1.2005 is partially set aside. The plaintiffs are granted leave to produce the

documents listed at items (d) and (e) of the Civil Application dated 2.10.2004, subject to payment of costs of Rs.2500/- to the defendants within two weeks from today.

No costs.

R.M. LODHA, J.

ssm.